IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/03/2004

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

W.P.No.3387 of 2003

PHI Seeds Limited,
3rd Floor,
Babukhans Millenium Center,
Rajbhavan Road,
Somajiguda,
Hyderabad 500 082,
rep. by its Legal Officer V.P.Srikanth .....Petitioner

-Vs-

1. The Special Deputy Commissioner of
Labour, Teynampet,
Chennai 6.

2. Mr. P. Vasantharajan,
Block S-74, 18th Street,
Anna Nagar, Chennai 40. .....Respondents

Writ Petition, under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari, as stated therein.

For Petitioner :: Mr. Ravi

For Respondents:: Mr. M.S.Palanisamy for R-1
Addl., Government Pleader

Mr. K.B.Iqbal Ahamed for R-2

:O R D E R
By proceedings dated 08.07.2002, the petitioner management
terminated the services of the second respondent, which runs as follows:-

" 8th July 2002

Mr. P.Vasanthrajan,
Employee No.:054
Personnel Officer,
S/o. Shri D.Pachaiappan,
S-74, 18th Street, Anna Nagar,

Chennai 600 040.

Sir,

Sub:-Termination from Services

This is to inform you that as per the terms and conditions of your appointment letter dated 21st April 1993, you are hereby informed that your employment with the company is terminated with immediate effect.

Please note, you will be paid 30 days salary in lieu of notice as per the terms and conditions of employment. Please find attached cheque amounting Rs.18,852/-(Rupees Eighteen Thousand Eight Hundred and Fifty Two Rupees Only) in favour of your name towards 30 days salary in lieu of notice.

The salary and other benefits payable as per the terms of employment are being computed and shall be settled by the accounts department of the company shortly, after verification and adjustment of all amounts due by you to the Company.

Please confirm that you are not in possession of any property or other material belonging to the company and kindly return any such property or material that may be in your possession.

Please also note that you are and shall continue to be bound by the confidentiality conditions relating to your employment with the company.

For PHI Seeds Limited,
Sd/-
P. Nanthakumar,
Chief Executive"

2.1. Aggrieved by the said proceedings of the petitioner / management, the second respondent preferred an appeal before the first respondent under Section 41(2) of The Tamil Nadu Shops and Establishments Act 1947 (hereinafter referred to as "the Act")

2.2. The only contention of the second respondent in the said appeal is that even though the petitioner / management has taken a decision to shift the office from Chennai to Hyderabad, he had never been issued with any order of transfer by the petitioner / management, transferring him from Chennai to Hyderabad. Therefore, he could not be terminated from services by the impugned order dated 08.07.2002 of the petitioner/ management, on the ground that the second respondent was not willing to join at Hyderabad.

2.3. The petitioner management in the appeal preferred by the second respondent herein also raised a preliminary objection as to the maintainability of the appeal on the ground that after shifting the office of

the petitioner / management from Chennai to Hyderabad, the first respondent / Labour Court ceased its jurisdiction as the petitioner / management closed their establishment within the State of Tamilnadu, to be more specific at Chennai.

3. The first respondent, by an order dated 13.01.2003 in TSE.I/IA/2 0/02, holding that on the date of passing of the order of termination dated 08.07.2002 against the second respondent, the petitioner management had the registered office at Chennai and therefore, the mere shifting of office of the petitioner / management thereafter would not by itself, be a ground to oust the jurisdiction of the first respondent, rejected the said preliminary objection.

4. Aggrieved by the interim order of the first respondent dated 13.01.2003, the petitioner management has preferred the above writ petition.

5.1. Mr.Ravi, learned counsel for the petitioner, challenging the order of the first respondent dated 13.01.2003 as arbitrary, unreasonable, contends that since the petitioner / management shifted their establishment from Chennai to Hyderabad, the first respondent has no jurisdiction to decide the appeal filed by the second respondent under Section 41(2) of the Act.

5.2. Learned counsel for the petitioner also brought to the notice of this Court that the second respondent himself, being a signatory to the orders dated 23.05.2002, had knowledge that the petitioner management shifted their establishment from Chennai to Hyderabad and therefore, he should have joined at Hyderabad and due to the failure of the second respondent to report at Hyderabad, it is presumed that he was not willing to join at Hyderabad, of course citing that no order of transfer, transferring him from Chennai to Hyderabad was served on him.

6. Learned counsel for the second respondent reiterating his contentions made before the first respondent / Labour Court contends that he had never been issued with any order of transfer by the petitioner / management, transferring him from Chennai to Hyderabad and therefore, he could not be terminated from service on the ground that he was not willing to join duty at Hyderabad.

7. I have given careful consideration to the submissions of both sides.

8.1. Obviously, learned counsel for the petitioner / management is unable to answer the question which warranted the Chief Executive of the petitioner / management to pass the impugned order of termination, which would, by itself prove that the second respondent was still under the control of the Chief Executive of the petitioner / management. Admittedly, the non-issuance of the order of transfer by the Chief Executive of the petitioner / management to the second respondent establishes that the second respondent had never been transferred from Chennai to Hyderabad. The mere knowledge of shifting of the establishment by the petitioner /

management, in my considered opinion would not be sufficient for the second respondent to join at Hyderabad, unless an order of transfer, transferring him from Chennai to Hyderabad is passed by the Chief Executive, under whose control the second respondent was discharging his duties.

8.2. Be that as it may, it is settled law that under Article 226 of the Constitution of India, it is improper for this Court to interfere at the stage of interim order in the dispute between the management and the employee, as the contention with regard to the jurisdiction of the first respondent could still be agitated in the appeal before the first respondent.

8.3. Following the decision rendered by the Apex Court in COOPER ENGINEERING LTD., ..VS.. P.P.MUNDHE (A.I.R. 1975 S.C. 1900), a Division Bench of this Court in M/S.AGRO CARGO TRANSPORT LTD., ..VS.. E. MURUGAN AND ANOTHER (1994 W.L.R. 734), held as follows:-

"It is also the established legal position that normally the High Court, under Article 226 of the Constitution, does not interfere at the stage, as it is in the present case, on a finding recorded on a preliminary issue because it is open to the management to take up all the contentions at the later stage, if the award goes against it. As such, the Management does not lose the right to challenge the correctness of the finding recorded by the Labour Court. Here, it may be relevant to notice a decision of the Supreme Court in COOPER ENGINEERING LTD., ..VS.. P.P.MUNDHE (A.I.R. 1975 S.C. 1900), wherein it has been held that it will be legitimate for the High Court to refuse to intervene at this stage of the proceedings before the Labour Court on a finding recorded on a preliminary issue. The relevant portion of the judgment is as follows:-

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the Principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But, when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication"

Taking into account all these aspects of the matter, we decline to interfere with the order passed by the learned single Judge and keep open all the contentions advanced on both sides. The appeal is, therefore, dismissed."

9. Applying the ratio laid down in the above decisions, I find no merits the above writ petition and the same is dismissed. No costs.

10. However, since the matter is unnecessarily being dragged on by the petitioner / management, there will be a direction to the first respondent to dispose of the main appeal as expeditiously as possible, in any event, within a period of 90 days from the date of receipt of a copy of this order.

Index: Yes
Internet: Yes

Dpn/-

To:
The Special Deputy Commissioner of
Labour, Teynampet,
Chennai 6.